RECENT CASE NOTES

AGENCY—WORKMEN'S COMPENSATION—EXCLUSIVENESS OF REMEDY—INJURY NOT CAUSING DISABILITY.—The plaintiff was slightly injured in the course of his employment and received a small sum, without formal proceedings, as compensation. At the same time, however, a nerve was destroyed, resulting in permanent impotency. Since the compensation act made no provision for injuries not affecting earning power, this action was brought at common law for damages. *Held,* that the plaintiff could not recover, since the remedies given by the statute were exclusive of all others. *Hyett v. Northwestern Hospital* (1920, Minn.) 180 N. W. 552.

The legislative intent, in enacting compensation acts, was undoubtedly to abolish all existing causes of action for personal injuries suffered in the course of employment, and to substitute therefor definite compensation commensurate with the loss of earning power. *Peet v. Mills* (1913) 76 Wash. 437, 136 Pac. 685. Where the act does not provide compensation, there is no remedy. Next of kin to whom the act gives no death benefits may be deprived of their former statutory right of action. *Shanahan v. Engineering Co.* (1916) 219 N. Y. 469, 114 N. E. 795. Pain and suffering are no longer elements of actionable damage, but are risks of the employment. See *Sweeting v. Knife Co.* (1919) 226 N. Y. 199, 201, 123 N. E. 82, 83. The lost remedies are a part of the price that the employee has paid for his right to compensation. Both employer and employee gained benefits and made concessions. Bohlen, *Some Problems under Workmen's Compensation Laws* (1919) 67 U. P. L. REV. 62, 64. Injuries that do not result in lost earning power and are not included in the compensation schedules give no right to compensation under the act. *Shinnick v. Clover Farms Co.* (1915) 169 App. Div. 236, 154 N. Y. Supp. 423. Disfigurement, which is usually of this class, may, however, be so severe as to materially impair the ability to secure employment, and is then properly compensable. *Ball v. Hunt* [1912, H. L.] A. C. 496. The act gives the compensation, not for the injury, but for the actual disability. *Jones v. Anderson* (1914, H. L.) 8 B. W. C. C. 2. In a few jurisdictions the acts specifically provide compensation for severe disfigurement. See (1919) 28 YALE LAW JOURNAL, 715. When the disfigurement could not be compensated for under the act, it has been held that the injury did not come within the purview of the act, and that a common law recovery, therefore, was allowable. *Shinnick v. Clover Farms Co., supra.* But this doctrine is restricted to those cases where no disability whatsoever is involved. *Morris v. Muldoon* (1920) 190 App. Div. 689, 180 N. Y. Supp. 319. This point of view seems unjustifiable under the New York act, which provides that the employer's liability, as prescribed by the act, shall be exclusive and in place of any other liability whatsoever. Oklahoma also apparently recognizes this distinction. See *Adams v. Biscuit Co.* (1917, Okla.) 162 Pac. 938, 946. The Louisiana statute, which declares that the remedies therein granted for injuries for which compensation is provided are exclusive, has been construed to permit a common-law recovery for disfigurement, since the statute does not provide compensation for such an injury. *Boyer v. Box Co.* (1918) 143 La. 368, 78 So. 596. But this reasoning could hardly be applied to the Minnesota act, which completely abolishes the right to any other method, form, or amount of compensation than that provided. The decision in the principal case seems clearly sound. In the few cases *contra,* the desire to aid the injured employee appears to have prevailed over sound policy and the evident intention of the compensation acts. As to the constitutionality of disfigurement provisions in workmen's compensation acts see (1920) 33 HARV. L. REV. 473.